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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,746	06/27/2003	Joseph A. Pantelleria	HVCC.89175	7593
27526	7590	01/11/2006		
BLACKWELL SANDERS PEPER MARTIN LLP			EXAMINER	
4801 Main Street			MAI, TRI M	
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KANSAS CITY, MO 64112			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,746

Applicant(s)

PANTELLERIA, JOSEPH A.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 10-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 10-13, and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer-Jagenberg (2719663). Meyer-Jagenberg '663 teaches a closure having a body, a disc 3, a tab 2, a locking section at 5, note the adhesive pattern A surrounding the aperture. Furthermore, note the display of evidence of having been separated at edge 4.
3. Claims 10, 11, 12, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer-Jagenberg (2847151) in view of either Barnes et al. (2896839) or Johnson (3768719). Meyer-Jagenberg '151 teaches a closure having a disc 2 having an aperture 13, a tab 8 extending across the aperture with a connecting portion 6 connecting to the disc Meyer-Jagenberg meets all claimed limitations except for the adhesive adhered to the periphery of the aperture. Either Barnes or Johnson teaches that it is known in the art to provide resalable adhesive around the aperture. It would have been obvious to one of ordinary skill in the art to provide adhesive adhered to the periphery of the aperture in Meyer-Jagenberg as taught by either Barnes or Johnson to keep the content secured.

Regarding claims 12 and 13, the adhesive material in either Barnes or Johnson, inherently would have torn fibers from either the tab or the disc. There is no difference between the adhesive as set forth in the claim and the adhesive in either Barnes or Johnson.

4. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Meyer-Jagenberg '151 rejection, as set forth above, and further in view of Schmidt (6082614). It would

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have been obvious to one of ordinary skill in the art to provide perforation in the tab in the combination of Meyer-Jagenberg to provide added security.

5. Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Negoro (2926832) in view of either Barnes et al. or Johnson. Negoro teaches a closure having a disc 72 having an aperture 64 (note the aperture is formed after the opening), a tab 62 extending across the aperture with a connecting portion connecting to the disc. Negoro meets all claimed limitations except for the adhesive adhered to the periphery of the aperture. Either Barnes or Johnson teaches that it is known in the art to provide resalable adhesive around the aperture. It would have been obvious to one of ordinary skill in the art to provide adhesive adhered to the periphery of the aperture in Meyer-Jagenberg as taught by either Barnes or Johnson to keep the content secured.

6. Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Negoro rejection as set forth above, and further in view of Kuchler (2858060). To the degree it is argued that the Negoro combination does not teach the aperture. Kuchler teaches that it is known in the art to provide an aperture as shown in Fig. 10. It would have been obvious to one of ordinary skill in the art to provide an aperture in Negoro as taught by Kuchler to provide an alternative for dispensing the contents.

7. Applicant's arguments filed 10/13/05 have been fully considered but they are not persuasive. With respect to the Meyer-Jagenberg rejection, applicant asserts that the cut edge 4 does not display evidence of having been separated. The examiner submits that the torn edge is the evidence of having been separated after the first separation. Furthermore, applicant asserts that Meyer-Jagenberg fails to teach the aperture. It is noted that the claim is directed to a

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container. The claim does not limit the aperture to be in the blank forming the closure of the container. The container of Meyer-Jagenberg shows an aperture in the open position as shown in Fig. 4 then the open container meets the claimed limitations. Furthermore, similar to that of applicant's invention when the aperture 16 is shown only when flap 20 is open, Meyer-Jagenberg shows an aperture in the open position as claimed. Furthermore, applicant asserts that there is no tab adhered to the disc at the periphery of the aperture. The examiner submits that the tab is adhered to the periphery of the aperture as claimed. Note the adhesive pattern shown in Fig. 1.

8. With respect to the rejection of Meyer-Jagenberg in view of Barnes et al. or Johnson, applicant asserts that there is no teaching or suggestion of adhesive being adhered to the periphery of the aperture, the examiner submits that In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would recognize to provide adhesive around the aperture to keep the contents secured. It would have been obvious to one of ordinary skill in the art to provide adhesive adhered to the periphery of the aperture in Meyer-Jagenberg as taught by either Barnes or Johnson to keep the content secured.

Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based

on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the Negoro rejections, as set forth above, applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The examiner submits that the Negoro rejections as set forth above, are proper.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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1.